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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/042,985 | 10/19/2001 | John H. Schneider | ITW-13111 | 5951 |
| 7590 | 03/31/2005 | | EXAMINER | |
| DENNIS M. FLSHERTY, ESQ. OSTRAGER CHONG FAHERTY & BROITMAN P. C. 250 PARK AVENUE SUITE 825 NEW YORK, NY 10177-0899 | | | TRUONG, THANH K | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3721 | |
| DATE MAILED: 03/31/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/042,985 | SCHNEIDER ET AL. | |
| Examiner | Art Unit | | |
| Thanh K Truong | 3721 | | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 July 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,3-23 and 49-55 is/are pending in the application.

4a) Of the above claim(s) 12,23,51 and 53 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,3-11,13-22,49,52,54 and 55 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment received on July 12, 2004.
2. Applicant's cancellation of claims 2, 24-48, 50, 56 and 57 is acknowledged.
3. In light of the discussion from the telephone interview with the Applicant on January 25, 2005, the Final Office Action dated August 24, 2004 is hereby withdrawn.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-11, 13-22, 49, 52 and 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strand et al. (6,360,513) in view of Keller (3,255,869) or Hultberg (3,545,668).

Strand discloses a package (figures 3 & 5) comprising: a receptacle having a mouth at an upper end; a flexible zipper 20 attached to the mouth and comprising first and second fastener strips; a slider 20a movably mounted to the zipper for alternately opening or closing portions of the first and second fastener strips; and a header 11 enclosing the zipper and the slider; the enclosed header comprises first and second side edges and first and second walls each extending from the first side edge to the second side edge; the side edges comprising a first and second tear notches 24 formed therein, header comprising the line of weakness 12 extending generally laterally across

the header in a region lower than an elevation of the first tear notch and a second line of weakness 13 traversing a range of elevations encompassing a first elevation near an elevation of the first tear notch and a second elevation near an elevation of the first line of weakness 12 (figure 5).

Strand further discloses: the first and second header walls are sealed together, the first and second header walls are respectively integrally formed with opposing walls of the receptacle (15 of figure 10); and the first elevation is above a top of the slider and the second elevation is below a bottom of the slider (figures 3 and 5).

Strand discloses the claimed invention, but does not expressly disclose that the second line of weakness 13 is a slit. However, the examiner's contention is that line of weakness 13 is a collection of a plurality of slit. Furthermore, the line of weakness such as the perforated lines may be substituted with a series of slits line or other weakening means. To further support this contention, the following references are hereby presented:

Keller ('869) discloses a receptacle 10 comprising the series of the slits 14 (line of weakness or line of perforation across the top of the receptacle) to provide means to help the consumers to easily remove the top portion of the receptacle (column 2, lines 57-63).

Hultberg ('668) discloses a receptacle 16 comprising the series of the slits 45 (line of perforations) providing a line of weakness for removing the top portion of the receptacle (figure 8, column 3, lines 29-31), and Hultberg further discloses a second embodiment of a receptacle 56 as shown in figure 9 comprising the tear strip 58 having

a series of the slits 61 to provide a means to remove the tear strip 58 from the receptacle 56 (column 3, lines 71-75).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have used any line of weakness that has the equivalent structure as taught by Keller and Hultberg for providing a line of preferential tearing to provide a means to assist the removal of the portion of the receptacle (create an opening and providing access to the interior of the receptacle).

Moreover, it appears that Strand's package would perform equally well with the lines of weakness 13, for providing an easy way to open the package when the consumer tries to tear the header open. Accordingly, the use of the slit 20 in the present claimed invention is deemed to be a design consideration which fails to patentably distinguish over the prior art of Strand.

Strand further discloses: the first lines of weakness 13 is inclined at an angle in a range of 30 to 90 degrees relative to a line of the zipper 20, and the lower point of the first lines of weakness 13 being further away from the closest one of the first and second side edges than is the upper point of the first lines of weakness 13; and the first and second lines of weakness 12 and the first and second lines of weakness 13 are overlapping.

Response to Arguments

6. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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March 5, 2005.



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700